

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 27, 2022

Lyle W. Cayce
Clerk

No. 21-11085
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESUS CARREON-GRIMALDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-658-1

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Jesus Carreon-Grimaldo appeals the 110-month sentence imposed as a result of his conviction for illegal reentry after having been removed. *See* 8 U.S.C. § 1326(a), (b)(1). His sole argument on appeal is that we have

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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jurisdiction to review the district court's denial of his motion for a downward departure or variance made pursuant to U.S.S.G. 2L1.2, comment. (n.7).

Carreon-Grimaldo concedes that the argument is foreclosed by *United States v. Lucas*, 516 F.3d 316, 350-51 (5th Cir. 2008), and *United States v. Alaniz*, 726 F.3d 586, 627 (5th Cir. 2013), but he wishes to preserve it for further review. The Government has moved, without opposition, for summary affirmance or, in the alternative, for an extension of time in which to file a brief on the merits.

There is nothing in the record to indicate that the district court erroneously believed that it did not have the authority to depart. *See United States v. Fillmore*, 889 F.3d 249, 255 (5th Cir. 2018). Therefore, we do not have jurisdiction to review the denial of the motion for a downward departure. *See id.* Accordingly, this appeal is DISMISSED for lack of jurisdiction. The motion for summary affirmance is DENIED. The Government's alternative motion for an extension of time is, likewise, DENIED.